

REMARKS/ARGUMENTS

The following species elections have been identified by the Office:

Species Election A

Applicants have been required to elect one of the following drop formation or fragmentation techniques:

- (i) thermal heat treatment (see claims 2 and 14);
- (ii) hydrogen-plasma (see claims 3 and 14); and

Species Election B

Applicants have been required to elect one of the following uses of drops of fragments:

- (i) (carbon) nanotube or nanofiber formation (see claims 8, 9, 16 and 17);
- (ii) oxide layer formation (see claims 11, 12, 19 and 20).

Applicants provisionally elect, for examination purposes only and with traverse, the following species:

A(i) thermal heat treatment as the specie of drop formation or fragmentation techniques (readable on at least claims 1, 2, 4-7, 10, 13-15 and 18); and

B(i) (carbon) nanotube or nanofiber formation as the specie of uses of drops of fragments (readable on at least claims 1, 4-10, 13, and 15-18).

In regard to the election of species requirements, the Office alleges:

(1) with respect to election A, “species A(i) thermal heat treatment requires thermal action to cause the generic fragmentation effect, while species A(ii) hydrogen-plasma employs low-temperatures (...), thus using plasma species to cause the fragmentation effect, which are different special technical features, as the two techniques use different mechanistic effects & different energy sources to create the generic results;” and

(2) with respect to election B, “species B(i) (carbon) nanotube or nanofiber formation requires both using different source materials for the deposition & creating completely different morphology from species B(ii) oxide layer formation, thus are different special technical features.”

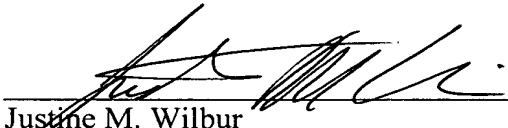
Applicants make no statement regarding the patentable distinctness of the species, but note that for restriction to be proper, there must be a patentable difference between the species as claimed. MPEP § 808.01(a). The Office has not provided adequate reasons or examples to support a conclusion that the species, as claimed, are indeed patentably distinct. Accordingly, Applicants respectfully submit that the election requirement is improper, and Applicants' election of species is for examination purposes only.

Accordingly, and for the reasons presented above, Applicants submit that the Office has failed to meet the burden necessary in order to sustain the requirement for election. Applicants therefore request that the requirement for election be withdrawn.

Applicants respectfully submit that the above-identified application is now in condition for examination on the merits, and early notice thereof is earnestly solicited.

Respectfully Submitted,

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